

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs, April 24, 2009

100 OAKS PLAZA, LLC., v. WISSAM HARIS d/b/a GYROS

**Direct Appeal from the Circuit Court for Davidson County
No. 07C-2970 Hon. Thomas W. Brothers, Judge**

No. M2008-00416-COA-R3-CV - Filed July 16, 2009

The tenant appeals the termination of his lease by his landlord. The undisputed evidence conclusively negated an element of the tenant's claim that his lease continued. We affirm the summary judgment the Trial Court granted to the landlord.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Wissam Haris, *pro se*.

Robert A. Guy, Jr., and Ryan K. Cochran, Nashville, Tennessee, for Appellee.

OPINION

This appeal arises out of a dispute between the landlord, 100 Oaks Plaza, LLC (100 Oaks), and a tenant, Wissam Haris. 100 Oaks is the owner of the 100 Oaks Mall (Mall) located in Davidson County. 100 Oaks purchased the Mall in December 2006 and under the purchase agreement the previous owner assigned the leases, including Mr. Haris' lease to 100 Oaks. Haris leased approximately 600 square feet in the Mall's food court where he operated Nashville Style Gyros. 100 Oaks treated Haris as a hold-over tenant with a month-to-month lease. It entered into

an agreement with Vanderbilt University Medical Center (Vanderbilt) that 100 Oaks would remodel the Mall and lease the entire second and third floors and the Office Tower to Vanderbilt, which included the food court. Based on the agreement with Vanderbilt, 100 Oaks began to terminate the leases of the tenants at the Mall, and on July 30, 2007, 100 Oaks served notice on Haris of the termination of his month-to-month tenancy. Haris took the position that he had a valid lease through December 31, 2010 and he refused to vacate the premises.

100 Oaks filed an unlawful detainer action to evict Haris in the General Sessions Court, which awarded possession of the premises to 100 Oaks on October 1, 2007. Haris filed an appeal of the General Sessions Court's Judgment, but while the unlawful detainer action was pending in the General Sessions Court, Haris, through counsel, filed a Complaint for Declaratory Judgment, Specific Performance, Injunctive Relief and Damages for Breach of Contract against 100 Oaks and Vanderbilt on September 25, 2007 in the Sixth Circuit Court for Davidson County.

Haris contended that he had a valid lease with 100 Oaks' predecessor and that the initial lease had been extended twice by written agreement until December 31, 2004. He further claimed that he had twice exercised his option to renew the lease on January 1, 2004 and June 1, 2004, thus extending the term of the lease until December 31, 2010. He attached handwritten letters from himself to 100 Oaks' predecessor that expressed his desire to renew the lease.

The Trial Court granted a Motion to Consolidate Haris' action with the appeal, and Haris then filed a motion for summary judgment in the Wrongful Eviction Suit. The basis of that motion was that Haris was legally entitled to possession of the premises during the pendency of the appeal from the judgment of the General Sessions Court as he had filed a bond with his appeal pursuant to Tenn. Code Ann. § 29-18-130(b)(2). Haris' motion for summary judgment in the Wrongful Eviction Suit was heard on December 14, 2007 and was denied by the Trial Court.

100 Oaks filed a memorandum in response to Haris' motion for summary judgment and incorporated a cross-motion for summary judgment in the body of its memorandum, and asserted that "the undisputed facts show that the eviction was proper and Haris had no lease". 100 Oaks' justification for not filing a separate Rule 56 motion for summary judgment cited *Thomas v. Transport Ins. Co.*, 532 S.W.2d 263, 266 (Tenn. 1976) and *Patton v. Estate of Upchurch*, 242 S.W.3d 781, 791 (Tenn. Ct. App. 2007) for the proposition that the Trial Court had the power to enter summary judgment against Haris as a matter of discretion without 100 Oaks having to file a separate motion. The Trial Court accepted 100 Oaks' memorandum as a cross motion for summary judgment. The 100 Oaks' motion was argued on January 11, 2008 and an order granting the motion was entered on January 23, 2008. The order granted 100 Oaks Judgment on all claims by and against 100 Oaks, and possession of the premises. The Court granted Haris' motion to release monies he had paid into the Court and dismissed any remaining issues.

Haris filed a *pro se* notice of appeal and a motion for an extension of time to file an appellate brief on the grounds that he was having difficulty finding counsel to represent him on appeal. His motion was granted by this Court, giving him an additional thirty days to file a brief.

Haris then filed his brief *pro se*, which does not meet the requirements as to form and content of the Tennessee Rules of Appellate Procedure. He does not raise issues on appeal or cite to any legal authority.

In February 2005, 100 Oaks filed an unlawful detainer complaint in the General Session Court alleging that Haris was in arrears on his rent in the amount of \$17,139.12. By letter agreement dated April 22, 2005, Haris and 100 Oaks LP settled the unlawful detainer matter. The settlement agreement specifically refers to Haris' tenant status as that of "hold-over tenancy" and provides that he would be permitted to use and lease the premises through December 31, 2005 in exchange for his payment of all outstanding base rental and additional monthly charges as well as part of 100 Oaks LP's attorney's fees. The settlement agreement provided that the parties had to enter into a consent judgment "which will likewise serve as a settlement agreement and written modification of the lease provisions." The consent judgment, like the letter agreement, refers to Haris' status as hold-over tenant prior to the settlement as follows: "to which the Landlord would otherwise be entitled to recover from Defendant as a hold-over tenant as of April 22, 2005, had this Agreement not been executed." The consent judgment was signed by the parties and provides that the terms of the consent judgment in conjunction with the April 13, 2005 letter agreement constituted the full and final settlement agreement between the parties. Paragraph 2 of the consent agreement is pertinent to this appeal and provides:

2. In consideration of Defendant's [Haris'] payment of the foregoing settlement amount and other consideration, the parties agree that Defendant shall be entitled to possession of the disputed leasehold . . . through and until December 31, 2005, provided he is not in default of the Lease or this Agreement, and subject in all respects to the terms of the Lease, **except as the terms of such are modified herein; provide, however the parties agree that Plaintiff is undertaking no obligation to renew or negotiate a new lease with Defendant, or to otherwise allow Defendant to remain in the Premises after the expiration of this extended term, December 31, 2005. . . .**

Paragraph 5 of the consent judgment states that if the terms of the Lease or the letter agreement are in conflict with the consent judgment, the consent judgment will govern, as follows:

5. The parties further agree that this Consent Judgment, in conjunction with the Letter Agreement, constitutes the entire agreement between the parties and supercedes all prior or contemporaneous statements, representations, agreements or writings as to the subject matter hereof and that to the extent the terms of the Consent Judgment, the Letter Agreement, or the Lease are irreconcilable, the terms of this Consent Judgment shall govern, followed by the terms of the Letter Agreement, and finally the Lease.

Despite the agreement referring to Haris as a hold-over tenant, he continued to

maintain in his complaint and affidavit that he had exercised the option to renew the lease by letters dated January 1, 2004 and June 1, 2004. Anthony Ruggeri's affidavit filed on behalf of 100 Oaks, establishes that in December 2006, 100 Oaks Plaza LLC bought the Mall from 100 Oaks LP and that, pursuant to the Purchase Agreement, the previous owner assigned all the leases, including Haris' lease, to 100 Oaks. Further, that on December 18, 2006, 100 Oaks notified Haris in writing of its purchase of the Mall and provided the address where he should send his rent. On July 30, 2007, 100 Oaks served notice on Haris of the termination of his month-to-month tenancy and the need for him to vacate the premises by August 31, 2007. Ruggeri, explained that no one at 100 Oaks had ever seen the letters produced by Haris regarding his requests for renewal of his lease until the litigation commenced, and that Ruggeri had personally reviewed the books and records of 100 Oaks concerning Haris and his tenancy at the Mall and no one had ever received the letters claimed to be mailed by Haris.

Mr. Haris did not provide a statement of the issues for review in his brief as noted, and on appeal "[r]eview generally will extend only to those issues presented for review." Tenn. R. App. P. 13. While Haris is proceeding *pro se*, it is still his obligation to comply with the Rules of Appellate Procedure and the Rules of this Court. While this Court, for good cause, may suspend the requirements or provisions of the Rules of Appellate Procedure and the Rules of this Court, it cannot serve as a *pro se* party's advocate on appeal and the Supreme Court has held that it will not find this Court to be in error for not considering a case on its merits where the appellant does not comply with the Rules of this Court. *Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000)(citing *Crowe v. Birmingham & N.W. Ry. Co.*, 156 Tenn. 349, 1 S.W.2d 781 (1928)).

The intent of the Tennessee Rules of Appellate Procedure is to allow cases to be resolved on their merits, Tenn. R. App. P. 1; *Johnson v. Hardin*, 926 S. W. 2d 236, 238 (Tenn. 1996) and this Court has wide discretion to waive or suspend the rules in furtherance of that intent. *Huskey v. Crisp*, 865 S.W.2d 451, 455 (Tenn. 1993); Tenn. R. App. P. 2.

We glean from the record that the dispute between 100 Oaks and Haris is whether he had a lease through December 31, 2010, or he had a month-to-month lease, as the Trial Court held.

The facts set forth in support of 100 Oaks' Motion for Summary Judgment were uncontested by Haris and support only one conclusion, that 100 Oaks was entitled to a summary judgment as a matter of law.

It is uncontested that the detainer matter was settled between the parties, as evidenced by a letter agreement and a consent judgment. The letter agreement and the consent judgment both reference Haris as a hold-over tenant. The consent judgment provided that Haris could "use and lease" the premises through December, 31, 2005 provided he is not in default of the initial lease and subject to the terms of the initial lease except as modified by the consent judgment. The consent judgement modified the terms of the initial lease to provide that 100 Oaks had no obligation to renew or negotiate a new lease with Haris or to allow him to stay on the premises after December 31, 2005.

There is no dispute that all the material evidence in the record establishes that Haris became a month-to-month tenant after the settlement agreement and 100 Oaks Plaza had conclusively negated an essential element of appellant's claim. Accordingly, we affirm the summary judgment entered on behalf of 100 Oaks and remand, with the cost of the appeal assessed to Wissam Haris.

HERSCHEL PICKENS FRANKS, P.J.